STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1269

In the Matter of the Welfare of the
Children of: S. C. D. and H. L. D., Parents.

Filed February 20, 2018
Affirmed
Halbrooks, Judge

Itasca County District Court
File No. 31-JV-16-2005

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Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant-father challenges the district court's decision to terminate his parental rights on the grounds that the district court judge abused her discretion by not recusing herself for circumstances constituting bias and by determining that reasonable efforts to

correct the conditions leading to the children's out-of-home placement have failed. We affirm.

FACTS

H.L.D. (father) and S.C.D. (mother) married in 2009 and have three minor children together. When they lived together, mother generally tended to the children's needs while father either slept or spent time in the garage. Father and mother fought often, many times in front of the children, and father called mother disparaging names such as "whore" and "pig"; one time, one of the children also called mother a "pig." Although father cooked meals for the family, mother was responsible for the majority of the day-to-day decisions. In October 2013, father moved out of the house. In 2015, by court order, father and mother's marriage was dissolved. Between October 2013 and May 2015, the children lived with mother.

On May 16, 2015, a sheriff's deputy initiated a traffic stop and found mother in possession of methamphetamine and paraphernalia. All three children were in the vehicle with mother and witnessed mother being arrested. Mother was charged with fifth-degree controlled-substance possession, and the children were placed with their maternal grandmother.

On May 22, 2015, Itasca County filed a child in need of protection and services (CHIPS) petition under Minn. Stat. § 260C.007, subd. 6(8) (2014), alleging that the children were without proper parental care because of the emotional, mental, or physical disability or state of immaturity of mother and that the children's behavior, condition, or environment were such as to be injurious or dangerous to the children or others under Minn.

Stat. § 260C.007, subd. 6(9) (2014). Mother and father initially entered denials to the CHIPS petition.

During a July 2015 pretrial conference, mother reached a settlement with Itasca County and admitted that the children were in need of protection and services. As a result, the statutory claim under Minn. Stat. § 260C.007, subd. 6(9), was dismissed. Father again entered a denial but, as the noncustodial parent, agreed to abide by the conditions imposed by mother's settlement with Itasca County. Father testified that he sustained a traumatic brain injury 25 years earlier, had been diagnosed with a sleep disorder, major anxiety, and depression, and was actively participating in individual therapy through Adult Rehabilitative Mental Health Services (ARMHS). The district court determined that the children were in need of protection and services but ordered that the children continue residing with mother.

On September 1, 2015, during the pendency of the CHIPS action, father moved for primary custody of the children. Mother opposed the motion. At an October 2015 review hearing on father's motion, the district court concluded that there were safety issues related to both parents, scheduled an evidentiary hearing, and placed the children in father's temporary care pending the outcome of the evidentiary hearing.

At the close of the evidentiary hearing on November 5, 2015, the district court transferred custody of the children to Itasca County for placement in foster care. Father signed and dated court-approved out-of-home placement plans for each child.

The district court held two permanency-proceeding review hearings. At a February 2016 hearing, the district court concluded that out-of-home placement services were still necessary because neither parent had made sufficient progress to warrant reunification. At a June 2016 hearing, the district court again determined that out-of-home placement services were still necessary, reasoning that "it is not realistic to project that either parent will be able to acquire and execute proper parenting skills . . . in the foreseeable future."

In July 2016, the district court ordered Itasca County to file a termination-of-parental-rights (TPR) petition under Minn. Stat. § 260C.204 (2014), because the children, at the time of the filing of the CHIPS petition, were all under age eight and had been in foster care for six months. On July 13, 2016, Itasca County petitioned to terminate mother's and father's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2014), alleging that reasonable efforts to correct the conditions leading to the children's out-of-home placement had failed.

In August 2016, father moved for a trial home visit, overnight parenting time, and a suspension of the permanency proceedings. Mother also brought a motion, requesting a trial home visit, unsupervised parenting time, and a dismissal or stay of the permanency proceedings. Father and mother appeared for an admit-deny hearing on the permanency proceedings and to argue their pending motions. The district court denied both motions in their entirety, explaining that the record failed to demonstrate that "either parent [had] in fact made sufficient and lasting positive changes in their parenting abilities and skills as necessary to otherwise support the relief requested in the motions" and that the children were "too young" and "too vulnerable" to safely return to either parent.

After the district court denied father's and mother's motions, father and mother jointly moved to remove the district court judge for bias or, alternatively, to continue the permanency proceedings and expand father's parenting time. The district court denied both motions.

Father petitioned the chief judge of the Ninth Judicial District, seeking review of the district court's decision to deny father's removal motion. The chief judge denied father's petition. Father then petitioned this court for a writ of prohibition to remove the district court judge from further proceedings. A special-term panel denied father's petition.

Mother voluntarily terminated her parental rights to the children on May 16, 2017. Father appeared for trial on May 23, 2017. By then, the children had been in out-of-home placement for 564 days. The following persons testified at the six-day trial: mother; the foster-care mother; a Ross Resources visitation partner; a Ross Resources program director; a mental-health therapist; an ARMHS worker; a mental-health practitioner; psychologist Patricia L. Cortese, Ph.D.; a second psychologist; father's mother; an Itasca County social worker; father's nonjoint daughter; an acquaintance of father's; father; and the children's guardian ad litem (GAL). The district court also admitted approximately 200 exhibits into evidence, including case plans, case goals, progress notes, medical records, and previous orders. On July 19, 2017, the district court issued an order terminating father's parental rights on the ground that reasonable efforts had failed to correct the issues leading to the children's out-of-home placement. Father moved for a new trial, which the district court denied. This appeal follows.

D E C I S I O N

I.

Father contends that the district court judge abused her discretion by denying his motion to remove herself for cause, reasoning that the judge's comments on the record and decision to deny father expanded parenting time demonstrated the judge's bias.[1] A district court's decision to deny a recusal motion is discretionary and "should not be reversed absent clear abuse of that discretion." *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

The Minnesota Rules of Juvenile Protection Procedure provide that "[n]o judge shall preside over any case if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter." Minn. R. Juv. Prot. P. 7.07, subd. 2. The same rules provide that a party may remove a judge upon a motion filed within ten days after receiving notice of the presiding judge. *Id.*, subd. 3(a), (d). But a "judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge." *Id.*, subd. 3(b). An

[1] A special-term panel of this court previously addressed father's judicial-bias claim, concluding that the district court did not abuse its discretion by not recusing itself. *In re Welfare of Children of S.C.D.*, No. A16-1865 (Minn. App. Jan. 10, 2017) (order). In general, "[n]o petition for rehearing shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01. But we may address father's judicial-bias claim on its merits even though a special-term panel denied father's writ of prohibition request. *See Troxel v. State*, 875 N.W.2d 302, 313-14 (Minn. 2016) (denying judicial-bias claim on the merits notwithstanding a special-term panel denying writ of prohibition). In this instance, we choose to do so.

affirmative showing of prejudice includes a showing that the judge might be excluded for bias from acting as a juror in the matter. *Id.*, subd. 3(c).

Father did not request removal of the district court judge until September 2016—long after the statutory ten-day time period had lapsed. Father must therefore make an affirmative showing of prejudice. *Id.*, subd. 3(b). In an effort to do so, father attacks decisions and statements made by the district court. First, father asserts that in June 2016, the district court exhibited bias by ordering a permanency petition as to *both* parents even though father individually "had substantially complied with the case plan." Second, father argues the district court exhibited bias by denying his motion for expanded parenting time. Third, father argues that the district court exhibited bias by commenting during the admit-deny hearing:

> [Father] has service providers all around him. He has acknowledged to me he is unable to care for his own needs without a full time case manager. So you're saying the case manager's going to move in with him and the children and take care of all of them?
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> . . . .
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> I just ask that everyone in here, you know, take off your rose colored glasses and acknowledge the situation. Do I wish it was different? I do. Do I like being the only one here who sees the trouble? No. I just feel like nobody is willing to acknowledge . . . the risks that these children face. I just don't understand it.

Father maintains that the district court's decisions and comments on the record demonstrate that the district court "had already made [its] decision that Father was unfit despite the evidence" and only denied father and mother's request for a continuance and

expanded parenting time because the district court did not like father. Father also contends that no evidence supports the district court's "biased conclusions." We disagree.

Father's bias claim reflects his dissatisfaction with the district court's adverse rulings against him. It is well-established that adverse rulings do not constitute an affirmative showing of prejudice. *See, e.g.*, *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). And although the district court made comments relating to father's ability to parent, the district court repeatedly said that a trial was necessary to determine whether to terminate father's parental rights. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (explaining that "the record reflects somewhat harsh responses and questioning by the [district] court" but nevertheless determining that "the [district] court's behavior did not reflect bias against appellants"). After fully reviewing the record, we conclude that the district court judge properly exercised her discretion in denying father's motion to remove herself for bias.

II.

Father also maintains that the district court abused its discretion by concluding that reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement, arguing that the efforts were impeded by the district court's "arbitrary and biased restriction on contact between Father and the children."

On appeal from a district court's decision to terminate parental rights, we review "the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*,

805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We must "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "The child's best interests, however, remain the paramount consideration in every termination case." *Id.* The petitioner must establish by clear and convincing evidence that a statutory ground exists for terminating parental rights. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

One statutory ground for terminating parental rights exists if reasonable efforts, under the direction of the district court, have failed to correct the conditions leading to out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). It is presumed that reasonable efforts have failed upon a showing that

> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;
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> (iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Id. Each of the above four requirements is analyzed in turn.

First, all three children were under age eight at the time of the CHIPS proceeding. The record also reflects that the children were placed in foster care in November 2015, and the county petitioned for termination of father's parental rights in July 2016. Therefore, the district court properly determined that the children had been in foster care for more than six months. *Id.*, subd. 1(b)(5)(i).

Second, it is undisputed that the district court approved out-of-home placement plans required under Minn. Stat. § 260C.212 (2014), and that those placement plans were filed according to Minn. Stat. § 260C.178 (2014). *Id.*, subd. 1(b)(5)(ii).

Third, the conditions leading to the children's out-of-home placement had not been corrected. "It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan." *Id.*, subd. 1(b)(5)(iii); *see S.E.P.*, 744 N.W.2d at 388 ("[A] case plan that has been approved by the district court is presumptively reasonable.").

Here, after mother settled with Itasca County, father agreed to abide by a court-ordered and court-approved case plan. Father's case plan required him to demonstrate that he is willing and capable of providing a safe and stable home for himself and the children; abstain from the possession, use, or consumption of alcoholic beverages and controlled substances; not associate with third parties he knows, or has reason to believe, to be

possessing, using, or under the influence of alcohol or other controlled substances; not knowingly expose the children to third parties he knows, or has reason to believe, are possessing, using, or under the influence of alcohol or other controlled substances; abide by mental-health services including those pertaining to medication management and those recommended by ARMHS; and cooperate and comply with protective supervision to be exercised by the county agency for the safety, welfare, and best interests of the children.

Father's out-of-home placement plan included more than 30 goals, including cooperating with ARMHS, remaining law abiding, attending and actively participating in visitation with the children, refraining from discussing the case, demonstrating the ability to manage all three children, understanding and implementing parenting skills that demonstrated a willingness and ability to care for the children, demonstrating an understanding of the importance of stability and predictability for his children, implementing Circles of Security knowledge learned with Dr. Cortese during visits with the children, learning how to appropriately manage each child's individual needs and behaviors, refraining from inappropriate behavior with Ross Resources employees, and taking ownership of his part of the child-protection case and articulating what he needed to improve in order to move forward.

The district court concluded that, despite meeting some of the goals, father had not substantially complied with tasks that required him to exercise judgment, discretion, or insight. The district court detailed in particular that father did not remain law abiding because he was charged with and pleaded guilty to misdemeanor theft after taking money from a wallet in a store, an event which he justified by saying it would not have happened

had the children been present. The district court also explained that while father had partially complied with attending and actively participating in visits, he had not substantially complied because "he repeatedly talked about the case in front of the Children, and he made inappropriate comments to Ross Resources staff members that they perceived as threats." The district court further determined that father had completed Circles of Security training but had failed to successfully implement the teachings and that father had not demonstrated an understanding of the importance of his role in parenting.

The district court's determination that father had not substantially complied with the case plan is supported by clear and convincing evidence. Two Ross Resources employees testified that father continually discussed the pendency of the CHIPS action whenever they were present during in-home visits. And during one such visit, father asked a female Ross Resources employee if he could take a picture of her "for personal use," which he later described as potential evidence for a local news investigation. Father also told the Ross Resources employees that he would sue the county and win and that the only reason the kids misbehaved is because the county took them away from him. Ross Resources cancelled future visits because of father's picture request.

In addition to the testimony from the Ross Resources employees, an ARMHS employee testified that, while father was improving, he still required assistance from an ARMHS employee to effectively manage his own schedule and complete paperwork. Dr. Cortese also testified that father had not successfully learned and implemented the Circles of Security training. In light of the above record evidence, the district court properly concluded that father had not substantially complied with the case plan.

Fourth, reasonable efforts were made by the social-services agency to rehabilitate father and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(iv). "The nature of the services which constitute 'reasonable efforts' depends on the problem presented." *S.Z.*, 547 N.W.2d at 892. In determining reasonableness, the district court shall consider whether services to the children and family were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2016). Efforts toward reunification must be designed to address "the problem presented," *S.Z.*, 547 N.W.2d at 892, and must include "real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child[ren]." *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Sept. 18, 1987).

An Itasca County social worker testified that Itasca County Health and Human Services (ICHHS) and Beltrami County provided father with the following services to improve his parenting skills: (1) a parenting capacity assessment; (2) a diagnostic assessment; (3) a rule 25 assessment; (4) individual therapy; (5) medication management (6) gas vouchers and transportation assistance; (7) Circles of Security training; (8) an ARMHS employee; (9) in-home services; (10) drug testing; (11) supervised visitation; (12) training in family group decision-making; (13) a neuropsychological evaluation; and (14) case-management services. The district court determined that those services were "realistic, consistent, culturally appropriate, timely, available and accessible, as well as

adequate and relevant to the child protection and family issues" and that those efforts were "reasonable . . . to rehabilitate Father and reunite the family."

Father first reasons that the Circles of Security program—a national, standardized program that focuses on attachment issues for parents and children—was not reasonable because the district court did not allow him expanded parenting time during the pendency of the permanency proceedings. We disagree.

Dr. Cortese testified that she chose the Circles of Security program based on the uniqueness of father's family. Although "theoretical," Dr. Cortese testified that she paired father's program with in-home training services designed to help father implement the program's teachings. The Circles of Security program was also designed to improve attachment issues between father and the children. Dr. Cortese testified that she implemented the Circles of Security program to help father and the children maintain a relationship despite being separated. Further, the children's GAL testified that father's case plan was tailored appropriately to each child but also focused on improving how all three children interacted with people in the community and helping the children stay focused, concentrate, and follow through on tasks rather than acting on impulse.

Father also contends that the efforts were not reasonable because the county delayed two months in implementing his in-home service visits. Dr. Cortese recommended starting in-home services two months after father completed the Circles of Security program. But as the district court explained, father received in-home services for 11 months on a weekly basis. Therefore, we agree with the district court that a two-month delay over an 11-month period did not render the services unreasonable.

After considering the array of services provided to father, we conclude that the district court acted within its discretion in determining that the county's efforts were reasonable. *See S.E.P.*, 744 N.W.2d at 387 (affirming termination of parental rights and concluding efforts were reasonable where county provided an array of services, "including in-home parenting education through shared family foster care, an in-home social worker, group therapy and individual counseling, sessions with the Intervention Program for Women and Invest Early Parenting, and frequent meetings with her assigned social worker"); *S.Z.*, 547 N.W.2d at 892 (concluding efforts were reasonable where, in light of the parent's serious and persistent mental illness, the mental-health services "were tailored to the problem that prevented him from being able to parent"). Therefore, there is clear and convincing evidence supporting the district court's conclusion that reasonable efforts to correct the conditions leading to the children's out-of-home placement have failed under Minn. Stat. § 260C.301, subd. 1(b)(5).

Last, we must determine if the district court abused its discretion by concluding that terminating father's parental rights is in the best interests of the children. In deciding whether to terminate parental rights, the best interests of the child must be the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2016). "In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (quotation omitted). "Where the interests of

parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

Here, the district court explained that, although father strongly desires to preserve his relationship with the children and although the children have a positive relationship with him, the children's needs for a stable, predictable environment "greatly outweigh any interest in preserving the child-parent relationship with Father." The record supports the district court's conclusion. Trial testimony from Dr. Cortese, the ARMHS employee, and Ross Resources employees confirms that father cannot meet his children's needs because of his mental and physical disabilities, along with his inability to accept responsibility for the children's behaviors. For example, Dr. Cortese testified that the children require permanency and none of the children demonstrates secure attachment with father. She also stated that the children need a caregiver who can meet their high needs. The children's GAL testified that "it would be in the best interests of the children for father's rights to be terminated" because it would allow the children "to be in a stable, consistent home with follow through." In addition, the Itasca County social worker testified that it would not be in the children's best interests to give father more time to make changes, reasoning that the children "need something stable" and that it is not realistic to project that father could improve over time.

After thoroughly reviewing the record, we conclude that the district court did not abuse its discretion in concluding that it is in the children's best interests to terminate father's parental rights.

Affirmed.